Supreme Court, U.S.
FILED
DEC 18 1991
OFFICE OF THE CLERK

No. 91-657

In the Supreme Court of the United States

OCTOBER TERM, 1991

VINCENZO RIVERSO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

LOUIS M. FISCHER
Attorney
Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether the evidence was sufficient to sustain petitioner's convictions.

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Statement	2
Argument	5
Conclusion	7

TABLE OF AUTHORITIES

Cases:

Jackson v. *Virginia*, 443 U.S. 307 (1979)	5
Tiffany Fine Arts, Inc. v. *United States*, 469 U.S. 310 (1985)	5

Statute:

21 U.S.C. 846	2

In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-657

VINCENZO RIVERSO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is not reported, but the judgment is noted at 932 F.2d 957 (Table) *sub nom. United States* v. *Adamita.*

JURISDICTION

The judgment of the court of appeals was entered on April 30, 1991. A petition for rehearing was denied on July 16, 1991 (Pet. App. 24a). The petition for a writ of certiorari was filed on October 18, 1991, and thus is out of time under this Court's Rule 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of conspiracy to import heroin into the United States and to export cocaine from the United States, conspiracy to distribute heroin, cocaine, and marijuana, and conspiracy to possess heroin, cocaine, and marijuana with intent to distribute, all in violation of 21 U.S.C. 846. He was sentenced to 151 months' imprisonment, to be followed by four years' supervised release. The court of appeals affirmed. Pet. App. 1a-23a.

1. This case involved an international narcotics trafficking network headed by co-defendant Alfredo Spavento, which operated from 1985 until the participants were arrested in March 1988. The conspiracy focused on the distribution of heroin to wholesale customers. The conspirators acquired the heroin both in this country and in Italy, where they swapped cocaine that they smuggled to Europe for the heroin. They also sold cocaine to wholesale customers and negotiated to purchase a multimillion-dollar quantity of marijuana to distribute in this country. As the court of appeals concluded, the evidence that was related to two of the conspiracy's operations established that petitioner provided substantial assistance to at least two of Spavento's operations. Pet. App. 4a-5a.

a. In August 1987 Jerry Mark, acting at the behest of conspirator Rafael Fiumara, smuggled a package of cocaine into Switzerland, and then to Rome, where he delivered the package to petitioner. Tr. 768-781. In September of the same year, petitioner and co-conspirator Angelo Palumbo met with Mark, who was seeking to collect the money Fiumara owed him as compensation for smuggling cocaine to

Europe. Tr. 782-786. At the meeting, petitioner gave Mark $500 and arranged for Mark to contact him if he was unable to reach Fiumara. Tr. 784-785. Petitioner explained that more money would follow, but that Mark should be patient because there were problems with "the business" and because "things [we]ren't working well." Tr. 785. Petitioner met with Mark on several other occasions later in 1987, at which time petitioner paid Mark more of the money that was owed to him. Tr. 786-792. Finally, petitioner and Fiumara contacted Mark in March 1988, at which time petitioner gave him $1000 to make another smuggling trip to Europe. Tr. 794-798; see Gov't C.A. Br. 16-18.[1]

b. Because the cocaine-heroin swaps did not bring the organization enough heroin to satisfy its customers, Spavento and his associates looked to other persons as sources for heroin. This aspect of the scheme was discovered when a Spavento associate brought undercover FBI Agent Anthony Caruso to Spavento's store in search of heroin. After an aborted sale in June 1987, Spavento introduced Caruso on July 30, 1987, to petitioner and said that petitioner would arrange a second attempted heroin delivery. Tr. 4839-4840. The following day Caruso met with Spavento, petitioner, and co-conspirator Mariano Mazzarino. Tr. 4840-4843. Petitioner and Mazzarino got into Caruso's car with him and drove off to complete the transaction. Tr. 4843. Caruso suggested that he test the heroin and then return to Spavento's store, where his girlfriend had the money. Petitioner and Mazzarino responded that Spavento had not instructed them to complete the transaction in that fashion, and

[1] The trip did not occur because petitioner and Mark were arrested later that week. Tr. at 798.

that they would have to consult with Spavento. Tr. 4843-4844. Petitioner and Mazzarino then returned to Spavento's store, where petitioner and Spavento discussed the logistics with Caruso. Caruso then agreed to pick up his girlfriend and go to Queens to buy the heroin. Tr. 4844-4845. Caruso and undercover FBI Agent Darlene Marley followed petitioner and Mazzarino to a street corner in Queens. Tr. 4849-4851. There, petitioner explained that, because he was there to handle the deal, "[i]t'd [*sic*] like ah [Spavento]'s here. That's it. That's why I'm here. * * * I been with him for 20 years." GX 1110B, at 12-13. The transaction ultimately fell through because the conspirators feared the presence of police surveillance. Tr. 4852-4853; see Gov't C.A. Br. 20-21.

2. On appeal, petitioner argued that there was insufficient evidence to show that he was a knowing participant in the charged conspiracy. The court of appeals rejected that argument, finding that "there was overwhelming evidence that [petitioner] participated in sales to Agent Caruso and in the use of Jerry Mark as a courier to smuggle cocaine into Italy," and that petitioner acted "as Spavento's representative in these transactions." Pet. App. 16a. In the court's view, that represented "more than sufficient evidence to connect [petitioner] to Spavento's activities and thus to the charged conspiracy." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 10-13) that this Court should exercise its supervisory power to reverse the judgment below because, according to petitioner, the court of appeals' decision "rests on conclusions that are not supported by the evidence." Pet. 10. As such, the petition raises a claim not suited for review in this Court. See, *e.g.*, *Tiffany Fine Arts, Inc.* v. *United States*, 469 U.S. 310, 317 n.5 (1985) (stating that "this Court has frequently noted its reluctance to disturb findings of fact concurred in by two lower courts").

In any event, the decision below is manifestly correct. As this Court has made clear, a conviction should not be overturned for insufficiency of the evidence if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson* v. *Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). In light of this standard, it is clear that the court of appeals correctly concluded that "the evidence presented at trial established that Spavento, with the assistance of [petitioner], managed a network of narcotics suppliers and distributors." Pet. App. 4a. Although petitioner contended in the court of appeals that there were two separate conspiracies (one to distribute drugs in this country and one to sell cocaine for heroin in Italy), see *id.* at 3a-4a, the court of appeals correctly reasoned that both operations were part of the same conspiracy. As the court explained, both operations served as sources of supply for a single network operated by Spavento; the relationship between the operations was demonstrated by, among other things, petitioner's involvement in both. *Id.* at 4a-5a. As the evidence summarized above demonstrates, the govern-

ment's evidence clearly showed petitioner's involvement in both portions of Spavento's network.

Petitioner's argument in this Court seems to be that, because there were several sales to undercover agents in which petitioner did not participate, his activities were not part of the charged "Spavento network." But that argument ignores the fact that in the aborted July 30-31, 1987, transaction with Agent Caruso, Spavento specifically introduced petitioner to Caruso and said that petitioner would make the arrangements for the transaction. See Tr. 4839-4840. Moreover, petitioner himself said to Agent Caruso that he had been "with" Spavento for some 20 years, and that his being at the sale was the equivalent of having Spavento himself present. GX 1110B, at 12-13.[2]

In addition, as the court below aptly observed, petitioner received cocaine from Jerry Mark in Rome, later paid Mark for his smuggling efforts, and enlisted Mark's participation in another smuggling job for late March 1988 that failed to go through only because the defendants were arrested. Pet. App. 16a; Tr. 768-798. That transaction clearly demonstrates that petitioner also participated in the cocaine-for-heroin swaps. Petitioner argues (Pet. 11-12) that his participation in the swaps did not show his participation in the conspiracy, because there is no showing that the swaps ever produced any heroin for the operation. But petitioner's own statements to Mark demonstrate the connection of the cocaine-heroin swaps

---

[2] Similarly, when Agent Caruso indicated he wished to conduct the transaction in a way other than the way Spavento had directed, petitioner objected and refused to proceed, explicitly agreeing with Caruso's conclusion that petitioner must be taking orders from Spavento. See GX 1110B, at 5.

to "the business"; as mentioned above, petitioner explained to Mark that he was having difficulty paying Mark because there were problems with "the business" and because "things [we]ren't working well." Tr. 785. Taken in context, the jury reasonably could conclude that the "business" was Spavento's domestic drug trafficking network; the evidence related to the transaction with Caruso overwhelmingly established the participation of Spavento and petitioner in that aspect of the business.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

LOUIS M. FISCHER
Attorney

DECEMBER 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 312324 45202